

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-CV-302-FL

ANISA WILLIAMS EL and DUSHAWN)
WILLIAMS EL,)
Plaintiffs,)
v.)
DEANNA IVEY; ANN LOCKLEAR;) ORDER
FAYETTEVILLE POLICE)
DEPARTMENT; FANNIE MAE, the)
Federal National Mortgage Association;)
COLDWELL BANKER REAL ESTATE,)
LLC,)
Defendants.)

This matter is before the court for review of plaintiffs' pro se complaint pursuant to U.S.C.

§ 1915(e). United States Magistrate Judge Kimberly A. Swank entered memorandum and recommendation ("M&R"), pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), wherein it is recommended that plaintiffs' complaint be dismissed for failure to state a claim upon which relief can be granted. Plaintiffs filed objection¹ (DE 13) and motion for leave to amend complaint (DE 14). In this posture, the issues raised are ripe for ruling. Upon careful review of the M&R and of the record generally, having found no clear error, the court hereby ADOPTS the recommendation of the magistrate judge as its own. The original complaint is DISMISSED

¹ Although plaintiffs labeled this filing as "objection to order and memorandum & recommendation[,]'" plaintiffs do not call into question the analysis of the M&R, but rather seek leave to amend their complaint. (See (DE 13) at 1) ("The Plaintiffs would like to address the Court's findings that the complaint [sic] factual contentions are baseless, by amending the complaint pursuant to Fed. R. Civ. P. 15(a)(2). If the Courts considers and accepts the Plaintiff's amended Complaint, the Court will see that the complaint will satisfy the guidelines of Rule 8 of the Federal Rules of Civil Procedure."). Accordingly, the court construes this filing as a request for leave to amend complaint, as opposed to an objection to M&R.

WITHOUT PREJUDICE upon frivolity review for failure to state a claim upon which relief can be granted.

With respect to the remaining motion (DE 14), plaintiffs move for leave to amend complaint, to dismiss defendants Deanna Ivey, Ann Locklear, Coldwell Banker Real Estate, and the Federal National Mortgage Association (Fannie Mae), and to join the City of Fayetteville as a defendant. Where the “court should freely give leave [to amend] when justice so requires,” Fed. R. Civ. P. 15(a)(2), plaintiffs’ motion to amend is GRANTED, and the clerk is DIRECTED to file plaintiffs’ proposed amended complaint lodged at DE 14-1. Because plaintiffs have filed an amended complaint and this matter remains subject to the frivolity review screening requirements under 28 U.S.C. § 1915, the court REFERS the matter again to the magistrate judge for conduct of frivolity review of the amended complaint.

SO ORDERED, this the 26th day of March, 2020.



LOUISE W. FLANAGAN
United States District Judge